

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

ANTHONY MILLER, JESSICA MILLER,
BARBARA BROWN, and JEFFREY SEAVER,

Plaintiffs,

Case No.

vs.

Hon.

ALLENDALE CHARTER TOWNSHIP,
a Municipal Corporation; and JODY HANSEN,
Allendale Township Clerk, in her individual
capacity,

Defendants.

/

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/

COMPLAINT

INTRODUCTORY STATEMENT

1. This is a federal civil rights action under 42 U.S.C. § 1983 challenging Allendale Charter Township’s rejection of Plaintiffs’ applications to place bricks inscribed with racial justice-related messages in Allendale’s “Garden of Honor” even though it allowed bricks with a wide range of other messages.

2. Allendale began accepting brick applications in 1999 as part of a fundraising effort. The 1999 webpage describing the fundraising project stated that “the bricks will be engraved as specified by the donor. The engraving could include a veteran’s name, a business name, family members’ names, whatever the purchaser of the brick would like.” (Emphasis added.) In addition to bricks honoring veterans, Allendale has displayed bricks with such messages as “ALLENDALE CLASS OF 2003,” “I AM THE RESURRECTION AND THE LIFE,” “FIRST CRC OF ALLENDALE,”¹ and “LAW ENFORCEMENT SUPPLY.”

3. Allendale’s Garden of Honor contains a Confederate statue that has sparked controversy in the community. Plaintiffs believe the statue is a monument to racism and should be removed. As a form of protest they submitted several applications for bricks engraved with racial justice-related messages. Several of their submissions included the names of American military veterans.

4. For example, Plaintiff Anthony Miller, whose nickname is “Tony,” submitted an application for a brick that would read: “BLACK LIVES MATTER TAKE IT DOWN!—TONY.” Mr. Miller is a veteran of the United States Navy.

¹ “CRC” stands for Christian Reformed Church.

5. After Plaintiffs submitted their applications, the Allendale Township Board passed a resolution changing the rules for messages allowed on bricks. The new rule limited brick engravings to a veteran's name, branch of service, dates of service, war or conflict, location of service, rank, unit, medals and awards, and POW or MIA status.

6. Plaintiffs' applications were rejected one week later under the new policy.

7. Plaintiffs wish to be treated the same as the families, businesses, and religious groups who successfully applied for bricks engraved with messages wholly unrelated to veterans.

8. Defendants violated Plaintiffs' First Amendment rights by denying Plaintiffs the ability to express racial justice messages on engraved bricks when they permitted other people to express any message they wished -- including commercial messages, religious messages, messages celebrating the Class of 2003, and the like.

9. Defendants' application process in effect constituted an unlawful prior restraint on speech because it granted unfettered discretion to Defendants—who were guided by no objective standards—to deny brick applications with messages they did want to appear in the Garden of Honor.

10. Defendants also violated Plaintiffs' First Amendment rights when, after Plaintiffs paid for bricks with racial justice messages, they changed the criteria for the engraved brick program so that they could reject Plaintiffs' bricks.

11. Defendants Allendale and Township Clerk Jody Hansen also violated Plaintiffs' First Amendment rights by denying their brick submissions under a new policy enacted after Plaintiffs had already submitted their applications.

12. Plaintiffs seek a declaration that Defendants violated their First Amendment rights, an injunction ordering Allendale to approve Plaintiffs' brick applications and place the bricks in the Garden of Honor, in addition to nominal damages and other appropriate relief.

JURISDICTION AND VENUE

13. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343(a)(3) because this is a civil action seeking redress for the deprivation of rights secured by the United States Constitution.

14. Plaintiffs' claim for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

15. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(b), because that is the judicial district where the plaintiffs and defendants are located or reside, and where the majority of the events giving rise to this action occurred.

PARTIES

16. Plaintiff Anthony Miller is a Black 53-year-old United States Navy veteran and a Michigan resident. He lived in Allendale until recently.

17. Plaintiff Jessica Miller is a 40-year-old Michigan resident who lived in Allendale until recently.

18. Plaintiff Barbara Brown is a 69-year-old resident of Grand Haven, Michigan.

19. Plaintiff Jeffrey Seaver is a 51-year-old resident of Allendale, Michigan.

20. Defendant Allendale Charter Township is a municipal corporation.

21. Defendant Jody Hansen was the Allendale Township Clerk at all times relevant to this case. She is sued in her individual capacity. On information and belief, she resides in Ottawa County, within the Western District of Michigan.

FACTUAL BACKGROUND

The Engraved Brick Program in Allendale's Garden of Honor

22. Allendale Community Park contains a display called the Veterans Garden of Honor, which features nine life-size statues of soldiers in a circle surrounding an 18-foot-tall obelisk topped with an American eagle.

23. In 1999, as part of a fundraising project, Allendale created a program whereby members of the public could, for \$50, have bricks engraved with the message of their choice and placed in the Garden of Honor.

24. Allendale's policy with respect to the brick program did not place any limits on the type of message that would be permitted. The 1999 webpage describing the fundraising project stated that "the bricks will be engraved as specified by the donor. The engraving could include a veteran's name, a business name, family members' names, whatever the purchaser of the brick would like." (Emphasis added.)

25. Consequently, the Garden of Honor displays bricks with a variety of messages, many of which are completely unrelated to veterans. These messages include, but are not limited to, "ALLENDALE CLASS OF 2003," "I AM THE RESURRECTION AND THE LIFE," "FIRST CRC OF ALLENDALE," and "LAW ENFORCEMENT SUPPLY."

26. After many bricks were placed in the Garden of Honor, the engraved brick program went dormant for a number of years.

Allendale Reinstates the Brick Program

27. The Allendale Township Board decided to reinstate the brick program in August 2019 to raise more money for the Garden of Honor.

28. At its August 12 meeting, the Board contemplated limiting the messages to those honoring veterans, but ultimately decided not to do so.

29. At the Board meeting, Township Trustee Candy Kraker worried aloud about the sort of applications they might receive if they did not limit permitted content in some way. She asked, “In this political climate, should we put a disclosure in there or a disclaimer in there that if someone says something derogatory or awful that we can choose not to put that out there? Just sayin’.”

30. Supervisor Elenbaas replied, “We might misplace that record,” suggesting that they would refuse to install bricks with messages with which they disagree.

31. Treasurer David Vander Wall said, “Well I think we would just refuse that and defend it to the hill.”

32. Township Trustee Bruce Zeinstra added, “I think you always defer the right to not put something inappropriate.”

33. Rather than placing any official content restriction on brick applications, the Board simply raised the price of a brick to \$75 and began accepting applications again. The application form is attached as Exhibit B. It contains no content restrictions.

The Controversy Over the Confederate Statue in the Garden of Honor

34. The Garden of Honor contains a statue that has generated considerable controversy in Allendale. The statue depicts a Confederate soldier with a Confederate flag standing as equals with a Union soldier with a United States Flag. At the feet of the Confederate and Union soldiers

is a small, enslaved Black child crouched down and carrying a cotton bag. (See photo, Exhibit A.)

35. This statue is thought to be the only statue north of the Mason-Dixon line honoring a Confederate soldier.

36. After the murder of George Floyd in May 2020, hundreds of thousands of people across the United States took to the streets to protest police brutality and systemic racism perpetrated against Black Americans. Particularly in the South, many advocated for the removal of Confederate statues that they felt celebrated America's racist history and honored traitors who fought to secede from the Union.

37. Around this time, Plaintiffs and many others in western Michigan began advocating for the removal of the Confederate statue in the Garden of Honor. Plaintiffs believe that much like the Confederate monuments in the South, the statue is offensively racist and sends the message that Black people are not welcome as equal citizens in Allendale.

38. In June 2020, students from Grand Valley State University organized a protest at Allendale Community Park to demand removal of the statue. Additionally, Grand Valley State University released an official statement calling for Allendale "to relocate the statue and provide historical context," and offered its "assistance in furthering dialogue along racial justice and inclusion."

39. Plaintiffs attended the protest, where they were met by counter-protesters who carried guns and Confederate flags to intimidate them.

40. A committee consisting of several Allendale area residents appointed by the Township Board also recommended that the statue be removed. However, the Board has thus far refused to remove the statue. Instead, it allocated money to repair the statue.

41. In early 2021, Plaintiffs realized that Allendale’s brick program presented a unique opportunity to advocate for removal of the statue and the broader cause of racial justice in Allendale. By placing bricks in the Garden of Honor where the statue stands, they felt they could make a particularly powerful statement.

Plaintiffs Pay for Bricks Engraved with Racial Justice Messages

Plaintiffs Anthony “Tony” Miller and Jessica Miller

42. Plaintiff Anthony Miller is 53 years old and lives in the Grand Rapids area with his wife, Plaintiff Jessica Miller, and their children.

43. Mr. Miller served for twelve years in the United States Navy before he was honorably discharged. He currently works full-time as a truck driver.

44. Mr. Miller is Black and Ms. Miller is white. The Millers lived in Allendale together for about a year and a half. They hoped to lay down roots in Allendale but decided to move after a series of racially motivated incidents made them feel unwelcome there.

45. Most notably, the Millers’ next-door neighbor physically assaulted Mr. Miller while calling him a “monkey.” He called Mrs. Miller a “n*****-lover.” He repeatedly threatened the family, once warning that he would put the Millers’ children “in the ground.” The neighbor has also doxed the Millers online, committed acts of vandalism, and told others in Allendale that the Millers are terrorists.

46. The Millers sought help from the police and their property management company, but felt that both were unresponsive to their concerns.

47. In 2020, the Millers filed civil rights complaints with both the United States Department of Justice and the Michigan Civil Rights Commission. Both complaints are still pending.

48. When Mr. Miller learned from his wife that there was a Confederate statue in the Garden of Honor, he was incredulous. He believes that Confederate soldiers were traitors to the United States and should have no place in any Garden of Honor. He feels that the statue's presence is a slap in the face to Black Allendale residents and sends the message that they are not welcome as members of the community.

49. While living in Allendale, the Millers were active in an organization called Justice for Black Lives that participated in several protests in the area, including the June 2020 protest at Allendale Community Park organized by Grand Valley State University students. Mr. Miller was appalled to see other military veterans toting guns and Confederate battle flags to intimidate him and other protesters.

50. In addition to attending protests, the Millers repeatedly lobbied the Township Board to take concrete steps to make Allendale a more welcoming place to people of color. Township Supervisor Adam Elenbaas gave Mr. Miller his word that the Board would take such steps. Instead, Mr. Miller feels the Board has done virtually nothing, as illustrated by its vote to keep the statue in the Garden of Honor.

51. The Millers grew anxious about raising their biracial daughter in a community they believed to be hostile to racial inclusivity. While in Allendale, Ms. Miller regularly spoke at Township Board meetings about how to foster greater inclusivity for people of color.

52. Ms. Miller also met directly with Supervisor Elenbaas to discuss the statue and ways to make the community more inclusive. She proposed putting language on a plaque to place the statue in its historical context, but the township did not implement her proposal.

53. On March 19, 2021, the Millers submitted several brick applications, along with the required payment of \$75 per brick, in an attempt to honor the service of Black and Indigenous

Americans in the U.S. armed forces. The veterans the Millers sought to honor included Mr. Miller himself, as well as two of his uncles—one of whom served in Vietnam—and Frederick Douglass, among others.

54. The submission honoring Mr. Miller, who is called “Tony” by his friends, also expressed strong discontent with the statue. It stated:

BLACK LIVES MATTER
TAKE IT DOWN!—TONY.

55. Other submissions proclaimed either “BLACK LIVES MATTER” or “INDIGENOUS LIVES MATTER” followed by the name of a Black or Indigenous veteran.

Plaintiff Barbara Brown

56. Plaintiff Barbara Brown is 69 years old and lives with her wife in Grand Haven, Michigan. She is a retired optometrist.

57. Ms. Brown grew up in Ferguson, Missouri. Following the acquittal of Ferguson police officer Darren Wilson for the death of Michael Brown and the subsequent civil unrest that occurred, Ms. Brown got involved with Black Lives Matter-affiliated groups advocating for racial justice.

58. The Ferguson she saw on television—embroiled in racial tension, controversy, and literal flames—was not the racially integrated Ferguson she knew growing up. She felt morally obligated to take a stand for what she believed in.

59. Since moving to Michigan, Ms. Brown has remained heavily involved in racial justice advocacy along with members of her church in Grand Rapids.

60. Ms. Brown is a member of several Facebook groups aligned with Black Lives Matter. She became aware of the statue in the Garden of Honor when a photo was posted in one of the Facebook groups in which she was a member.

61. Together with her minister and several other members of her church, Ms. Brown attended the June 2020 protest organized by Grand Valley State University students and advocated for the removal of the statue. As she and other protesters were singing and peacefully protesting, men with guns and Confederate flags taunted them.

62. On February 19, 2021, Ms. Brown submitted an application for a brick engraved with the words:

SAY HER NAME
BREONNA TAYLOR
LOUISVILLE EOW.

63. Breonna Taylor was a 26-year-old Black woman originally from Grand Rapids who was fatally shot by Louisville, Kentucky police officers after they forced their way into her boyfriend's apartment while executing a no-knock warrant. Her death, like George Floyd's, inspired many to take to the streets in the summer of 2020. "EOW" stands for "End of Watch." Ms. Brown used that acronym to honor Taylor's service as an EMT and emergency room technician.

Plaintiff Jeffrey Seaver

64. Jeffrey Seaver is 51 years old and lives with his wife in Allendale. He has lived in Allendale for 26 years and raised two children there.

65. Mr. Seaver owns a design and marketing company in Grand Rapids and has worked as a community organizer on a variety of environmental and civil rights issues.

66. In June 2020, Mr. Seaver became aware of the statue in the Garden of Honor when he heard that students from Grand Valley State University were organizing a protest in Allendale Community Park.

67. In Mr. Seaver's view, the statue wrongly presents Confederate and Union soldiers as moral equals. He believes the statue portrays the enslaved child as subordinate and as a

nonparticipant in securing their own freedom. Further, he believes it is deeply degrading that the child is depicted as half-naked and carrying a cotton bag.

68. Above all, Mr. Seaver believes that no statue in the so-called Garden of Honor should honor Confederate soldiers who betrayed their country and fought to preserve slavery.

69. These deeply held convictions led Mr. Seaver to attend the June 2020 protest and take further action to demand removal of the statue.

70. On March 15, 2021, Mr. Seaver submitted a brick application to honor the former Commander in Chief with the words:

BLACK LIVES MATTER
BARACK OBAMA.

After Plaintiffs Paid for Bricks, Allendale Changed the Engraved Brick Rules and Refused to Install Their Bricks

71. When Plaintiffs paid for their engraved bricks, Allendale permitted individuals to decide to engrave any message they would like. In fact, the engraved brick program had allowed a wide variety of messages, including commercial messages, religious messages, and messages honoring a high school class. There were no objective standards in place that suggested that individuals could not have racial justice messages engraved on the bricks they purchased.

72. Nonetheless, Defendants did not want racial justice messages in the Garden of Honor and denied Plaintiff Barbara Brown's brick application on March 9, 2021. The Township Clerk cited a nonexistent "directive of the township board" that all bricks are "reserved for those who have served in one of the U.S. Department of Defense Armed or Reserved forces."

73. Thirteen days later, the Allendale Township Board passed a resolution on March 22, 2021 changing the rules for messages allowed on bricks. The new rule limited brick engravings to a veteran's name, branch of service, dates of service, war or conflict, location of service, rank,

unit, medals and awards, and POW or MIA status. The new application form is attached as Exhibit C.

74. Plaintiffs had paid for their bricks with racial justice themes before the Allendale Township Board changed the rules for messages on the bricks. Yet, on March 29, Defendants rejected all of Plaintiffs' remaining brick applications, citing the new content restrictions.

75. The new content rules were enacted in direct response to Plaintiffs' applications for bricks with racial justice messages.

76. Plaintiffs bring this action to require Allendale to honor their First Amendment rights by approving their brick applications and placing their bricks in the Garden of Honor. There is no adequate remedy at law.

CAUSE OF ACTION

VIOLATION OF THE FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH

77. Plaintiffs reallege and incorporate by reference as if fully set forth herein the allegations in all preceding paragraphs.

78. The First Amendment to the United States Constitution affords all persons the right to freedom of speech. Persons violating the First Amendment under color of state law are liable at law and in equity under 42 U.S.C. § 1983.

79. Defendants violated Plaintiffs' First Amendment rights by denying Plaintiffs the ability to express racial justice messages on engraved bricks when they permitted other people to express any message they wished -- including commercial messages, religious messages, messages celebrating the Class of 2003, and the like.

80. Defendants' application process constituted an unlawful prior restraint on speech because it granted unfettered discretion to Defendants—who were guided by no objective standards—to deny brick applications with messages they did not want to appear in the Garden of Honor.

81. Defendants also violated Plaintiffs' First Amendment rights when, after Plaintiffs paid for bricks with racial justice messages, they changed the criteria for the engraved brick program so that they could reject Plaintiffs' bricks.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

- a. Enter a judgment declaring that Defendant's rejection of Plaintiffs' brick applications constituted a violation of the First Amendment of the United States Constitution;
- b. Issue a permanent injunction ordering Defendant to approve Plaintiffs' brick applications and place bricks inscribed with Plaintiffs' messages in the Garden of Honor;
- c. Award nominal damages to Plaintiffs;
- d. Award costs and attorney's fees pursuant to 42 U.S.C. § 1988; and
- e. Grant or award such other relief that this Court deems just and proper.

Respectfully submitted,

/s/Michael J. Steinberg
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INDEX OF EXHIBITS

- A. Photo of Confederate Statue
- B. Original Brick Application Form
- C. New Brick Application Form

EXHIBIT A

Photo of Confederate Statue in the Garden of Honor



EXHIBIT B

Engraved Brick Application Form Until March 22, 2021

Veterans Garden of Honor

Donor Name _____

Address _____

Telephone _____

Email _____

(one letter per space, including spaces between words)

Please fill out the "brick" as you want your brick to be engraved.

Please enclose your donation of \$75.

Return the completed form to:

Allendale Charter Township, P O Box 539, Allendale MI 49401

Make checks payable to: Allendale Charter Township



EXHIBIT C

Engraved Brick Application Form After March 22, 2021



Allendale Township Veteran's Garden of Honor Brick Donation

Honoring Those Who Served

The Allendale Township Veteran's Garden of Honor Brick Donation program provides community members an opportunity to honor a loved one that served our country in a branch of the armed forces. Your generous donation of \$75 includes the purchase of one brick with engravement and installation in the Garden. Please note, there must be a minimum of 50 bricks donated before installation in the Garden will occur. Please follow the content requirements outlined below and submit this form with your \$75 donation to: Allendale Township Clerk, 6676 Lake Michigan Drive, PO Box 539, Allendale, MI 49401.

Donor Information

NAME: _____

ADDRESS: _____ CITY: _____ STATE/ZIP: _____

TELEPHONE: _____ EMAIL: _____

LINE ONE:

LINE TWO:

LINE THREE:

Content Requirements

Content is limited to combinations of the following: Name of Veteran, Branch of Service, Dates of Service, Name of War or Conflict, Location of Service, Rank, Unit, Specialty, Medals/Awards, or POW/MIA Status. For a full list of rules and regulations refer to Resolution # 2021-06.